REMARKS

This Response is submitted in reply to the non-final Office Action mailed on January 5, 2009. The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to the Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-509 on the account statement.

Claims 35, 37-52 and 54-68 are pending in the application. Claims 1-34, 36 and 53 were previously canceled. In the Office Action, Claims 35, 37-52 and 54-68 are rejected under 35 U.S.C. §112 and Claims 35, 37-52 and 54-68 are rejected under 35 U.S.C. §103(a). In response, Applicants have amended Claims 35, 37, 39, 43, 52, 54 and 61 and canceled Claims 38, 42, 44, 46, and 47. Applicants have also amended Claims 37, 39, 40, and 41 to depend from 35 and Claims 54-57 to depend from Claim 52. These amendments do not add new matter and are supported in the specification at page 7, lines 8-11; page 8, lines 8-10; page 9, lines 27-28 and page 11, lines 13-19. In view of the amendments and for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 35, 37-52 and 54-68 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicants have amended Claims 35, 37, 43 and 52 and canceled Claims 38, 42, 44, 46 and 47.

Regarding Claim 35, the Office Action asserts that the claim is indefinite because if the pet animal is already healthy and has sufficient vitamin E, then the limitation of improving or maintaining becomes ambiguous. In response, Applicants have amended Claim 35 to recite, in part, a method of improving or maintaining absorption of vitamin E in a pet animal that has, or is susceptible to, a vitamin E deficiency. This amendment is supported in the specification. See, specification, page 7, lines 8-11. As amended, Applicants submit that Claim 35 is not ambiguous as to the limitation of improving or maintaining.

The Office Action also asserts that Claim 35 does not describe a specific pancreatic function promoter, liver function promoter or intestinal mucosa function promoter. Applicants submit that reciting specific promoters is not necessary to meet the definiteness requirements of §112 because one having ordinary skill in the art would be able to ascertain the meaning of these

disputed claim terms in light of Applicants' specification. Moreover, Claims 37, 39-41 and 43 further specify these promoters.

Finally, the Office Action asserts that it is not clear how an intestinal function promoter or pancreatic promoter will increase lipid absorption and further improve vitamin E absorption. Applicants submit that several publications have confirmed an age-related decrease in lipid digestibility related to decreased digestive function and that pancreatic and intestinal supplements can at least partially increase lipid digestibility. See, specification, page 1, line 20 to page 2, line 29. Therefore, compositions that improve digestive function, such as the claimed intestinal function promoters or pancreatic promoters, increase lipid absorption capacity and, as a result, further improve vitamin E absorption. As such, Applicants submit that Claim 35 is unambiguous in its meaning and scope.

The arguments above also apply to independent Claim 52, amended to recite, in part, a method of maintaining or improving the serum vitamin E level in a pet animal that has, or is susceptible to, a vitamin E deficiency.

Regarding Claim 37, Applicants have amended the claim to incorporate the specific gut pH modifiers recited in Claim 38, which is now canceled. Moreover, the specification makes clear that the gut pH modifier depends on whether the gut pH modifier is necessary to increase, decrease, or maintain pH. See, specification, page 8, lines 15-24. Claim 54 has also been amended according to the amendment to Claim 37.

Regarding Claims 39, 41, 43, 44, 46 and 47, the Office Action asserts that the metes and bounds are not defined. In response, Applicants have amended Claim 43 and canceled Claims 44, 46 and 47. Claim 43 has been amended to clarify specific intestinal mucosa function promoters. MPEP 2173.02 states that definitiveness of claim language under 35 U.S.C. §112, second paragraph, must be analyzed, not in a vacuum, but in light of the contents of the specification, the prior art, and the claim interpretation one having ordinary skill in the pertinent art would make at the time the invention was made. MPEP 2712.02 further states that if one skilled in the art is able to ascertain the meaning of claim terms in light of the specification, 35 U.S.C. §112, second paragraph, is satisfied. As such, Applicants submit that one skilled in the art would be able to ascertain the meaning of each of the above claims in light of the specification. The metes and bounds of each of the above claims is established as follows:

Claim 39 (page 10, lines 4-32 of the specification), Claim 41 (page 11, lines 5-11), and amended Claim 43 (page 11, lines 13-19).

Accordingly, Applicants respectfully submit that the rejected Claims meet the requirements under 35 U.S.C. §112, second paragraph, and request that the rejection be withdrawn.

In the Office Action, Claims 35, 37-52 and 54-68 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,471,999 to Couzy et al. ("*Couzy*") in view of U.S. Patent No. 5,290,571 to Bounous et al. ("*Bounous I*") or U.S. Patent No. 5,451,412 to Bounous et al. ("*Bounous II*"), and further in view of "Micronutrient status in patients with gastrointestinal disease" to Simpson et al. ("*Simpson*"), "Effect of Bacterial or Porcine Lipase With Low- or High-Fat Diets on Nutrient Absorption in Pancreatic-Insufficient Dogs" to Suzuki et al. ("*Suzuki*") and WO 01/62280 to Margolin et al. ("*Margolin*"). Claims 35, 37-52 and 54-68 are rejected under 35 U.S.C. §103(a) as being also unpatentable over WO 02/15719 to Fuchs et al. ("*Fuchs*") in view of *Bounous I* or *Bounous II*, and further in view of *Simpson*, *Suzuki* and *Margolin*. Applicants submit that the cited references, alone or in combination, fail to disclose or suggest every element of the present claims.

Applicants submit that primary references *Couzy* and *Fuchs* fail to disclose or suggest a composition or a method comprising the administering of a composition comprising a liver function-promoter selected from the group consisting of taurine, emulsifiers, glutathione and glutathione promoters comprising between about 0.1% and about 1% by weight of the edible composition on a dry matter basis as required, in part, by amended independent Claims 35, 52 and 61. Though *Couzy* mentions use of taurine, *Couzy* never teaches a level or range for taurine. *Couzy* does not mention emulsifiers. *Couzy* further fails to disclose or even suggest glutathione and glutathione promoters, as admitted in the Office Action. See, Office Action, page 5, line 6. The Office Action also admits that *Fuchs* fails to disclose glutathione and glutathione promoters. See, Office Action, page 9, line 11. *Fuchs* teaches use of emulsifiers and taurine, but without any usage levels.

Applicants submit that the secondary references also fail to disclose or suggest a composition or a method comprising the administering of a composition comprising a liver function-promoter selected from the group consisting of taurine, emulsifiers, glutathione and

glutathione promoters comprising between about 0.1% and about 1% by weight of the edible composition on a dry matter basis as required, in part, by amended independent Claims 35, 52 and 61. Though the Office Action asserts that *Bounous I* and *Bounous II* discloses glutathione by disclosing a composition having whey protein concentrate, both references clearly teach whey protein levels significantly above the 0.1-1% levels of the claims. *Bounous I* teaches use of about 18-28 grams of whey protein per 100 grams of composition (18-28%). See *Bounous I*, Claim 1. *Bounous II* teaches diets containing 20-28% whey protein pancreatic hydrolysate, with immunoenhancing effect maximized at 20% concentration. See, *Bounous II*, column 12, lines 48-58. *Bounous II* also teaches the noted effects of the compositions disclosed were obtained at 20g/100g concentration with no further increments at 30 and 40g/100g protein in the diet. See, *Bounous II*, column 13, lines 12-15. The Office Action relies on *Simpson*, *Suzuki* and *Margolin* arguably to teach lipid assimilation. Therefore, the secondary references also fail to disclose or suggest a liver function-promoter selected from the group consisting of taurine, emulsifiers, glutathione and glutathione promoters comprising between about 0.1% and about 1% by weight of the edible composition on a dry matter basis as required, in part, by amended independent Claims 35, 52 and 61.

The Office Action asserts, however, that the correlation of maintaining vitamin E versus lipid absorption is not clear. See, Office Action, page 7, lines 14-15 and page 11, lines 18-19. However, the Office Action actually cites art (*Simpson* and *Margolin*) that teach this exact correlation. In fact, the Office Action relies on *Simpson* and *Margolin* for this specific purpose. See, Office Action, page 5, line 21 to page 6, line 4; page 6, lines 18-21; page 10, lines 4-9 and page 11, lines 1-4. Therefore, besides Applicants establishing a correlation between vitamin E and lipid absorption in the specification, the Office Action actually admits the same correlation.

Applicants submit that primary references *Couzy* and *Fuchs* also fail to disclose or suggest a method of improving the appearance of a pet comprising the step of increasing a pet's serum vitamin E level by feeding the pet a diet that maintains or improves the pet's lipid absorption capacity and comprises an acidifying agent as required, in part, by independent Claim 67. The Patent Office seems to suggest that *Couzy* discloses a pancreatic function-promoter such as lactic acid. See, Office Action, page 4, lines 13-16. However, *Couzy* merely discloses probiotics that produce lactic acid, not the inclusion of lactic acid as a component in the

composition. See, *Couzy*, column 3, lines 40-42. Regarding *Fuchs*, nowhere does the reference disclose or suggest an acidifying agent, nor does the Office Action cite support for such a claimed element.

Applicants submit that the secondary references also fail to disclose or suggest a method of improving the appearance of a pet comprising the step of increasing a pet's serum vitamin E level by feeding the pet a diet that maintains or improves the pet's lipid absorption capacity and comprises an acidifying agent as required, in part, by independent Claim 67. As stated above, the Office Action relies upon *Bounous I* and *Bounous II* arguably to teach glutathione and glutathione promoters of Claims 35, 52, 61. Moreover, the Office Action relies upon *Simpson*, *Suzuki* and *Margolin* arguably to teach lipid assimilation. Therefore, the secondary references also fail to disclose or suggest a diet that comprises an acidifying agent as required, in part, by independent Claim 67.

The Office Action asserts, in response, that Applicants present no correlation between vitamin E and acidifying agent. See, Office Action, page 8, lines 8-9 and page 12, lines 12-13. Applicants respectfully disagree. Preferred gut pH modifiers are those, for example, that promote fermentation and modify gut pH in a predictable and controllable manner. Examples of suitable acidifiers are citric acid and lactic acid. See, specification, page 8, lines 10-13. Acids like these inhibit the growth of pathogenic bacteria such as *Clostridium perfringens* and *Helicobacter pylori* that can lead to intestinal disease. See, specification, page 8, line 35 to page 9, line 1. Diffuse intestinal diseases, such as intestinal bacterial overgrowth, can lead to reduced nutrient (vitamin E) absorption in the intestine. See, specification, page 1, lines 33-35 In summary, one can avoid intestinal diseases that affect nutrient absorption by adding specific acids that regulate pH and inhibit growth of certain bacteria. Therefore, Applicants submit that a correlation exists between acidifiers and vitamin E absorption.

Applicants submit that the cited references, alone or in combination, fail to disclose or suggest every element of the present claims. Accordingly, Applicants respectfully request that the rejections of Claims 35, 37-52 and 54-68 under 35 U.S.C. §103(a) to *Couzy* or *Fuchs* in view of *Bounous I* or *Bounous II* and further in view of *Simpson*, *Suzuki* and *Margolin* be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

K&L Gates LLP

BY _____

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157

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